IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

SHAWN L. SPEAR,

      Plaintiff,

v.   Civil Action No. 5:04CV65
                                          (STAMP)

JO ANNE B. BARNHART,
Commissioner of Social
Security Administration,

      Defendant.

**MEMORANDUM OPINION AND ORDER
ACCEPTING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE**

    The <u>pro se</u> plaintiff, Shawn L. Spear, filed an action in this

Court on June 15, 2004 seeking judicial review of an adverse

decision by the defendant, Commissioner of Social Security,

pursuant to 42 U.S.C. § 405(g). The case was referred to United

States Magistrate Judge James E. Seibert for submission of proposed

findings of fact and recommendation for disposition pursuant to 28

U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B). On January 28, 2005, the

magistrate judge entered a report recommending that the plaintiff's

case be dismissed for failure to comply with the Local Rules.

Specifically, the magistrate judge found that the plaintiff had

failed to file a timely brief in support of his claim, and that

this brief was more than six months tardy pursuant to the deadline

stated in Local Rule of General Procedure 83.12(b). This Court did

not adopt this recommendation, and instead remanded the case to the

magistrate judge so that he could provide the plaintiff with a

notice pursuant to <u>Roseboro v. Garrison</u>, 528 F.2d 309, 310 (4th

Cir. 1975). The magistrate judge then provided the plaintiff with a <u>Roseboro</u> notice. On April 27, 2005, after no response from the plaintiff, the magistrate judge again entered a report recommending that the case be dismissed for failure to comply with the Local Rules.

Upon submitting this report, Magistrate Judge Seibert informed the parties that, if they objected to any portion of his proposed findings of fact and recommendation for disposition, they must file written objections within ten days after being served with a copy of the report. To date, the parties have filed no objections.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court is required to make a <u>de novo</u> review of those portions of the magistrate judge's findings to which objection is made. However, failure to file objections to the magistrate judge's proposed findings and recommendation permits the district court to review the recommendation under the standards that the district court believes are appropriate and, under these circumstances, the parties' right to <u>de novo</u> review is waived. <u>See</u> <u>Orpiano v. Johnson</u>, 687 F.2d 44, 47 (4th Cir. 1982); <u>Web v. Califona</u>, 486 F. Supp. 825 (E.D. Cal. 1979). Accordingly, this Court reviews the report and recommendation of the magistrate judge for clear error.

Local Rule of General Procedure 83.12(b) states in pertinent part: "Within thirty days after the defendant has filed an answer and a complete copy of the administrative record, the plaintiff shall file a brief in support of his or her claim(s) for relief

. . ." The record reflects that the magistrate judge correctly found that the plaintiff has failed to file a brief in support of his claim.

Because the parties have not objected to the proposed findings of fact and recommendation for disposition, and because this Court finds that the recommendation is not clearly erroneous, this Court hereby ACCEPTS and ADOPTS the magistrate judge's report and recommendation in its entirety. For the reasons stated above, it is ORDERED that this case be DISMISSED and STRICKEN from the active docket of this Court.

Moreover, under Wright v. Collins, 766 F.2d 841, 845 (4th Cir. 1985), the plaintiff's failure to object to the magistrate judge's proposed findings and recommendation bars the plaintiff from appealing the judgment of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit copies of this memorandum opinion and order to the pro se plaintiff and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: May 13, 2005

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE